

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CARL FOUST,

Case No. 2:20-cv-02553-WBS-JDP (PC)

**ORDER DENYING PLAINTIFF'S MOTION
TO APPOINT COUNSEL AND GRANTING
PLAINTIFF AN EXTENSION OF TIME**

CONSUMER ATTORNEY MARKETING SERVICE.

ECF No. 18

Defendant.

On March 4, 2021, the court screened plaintiff's complaint, notified plaintiff that it failed to state a claim, and granted plaintiff sixty days to file an amended complaint. ECF No. 14. Plaintiff has since filed a motion requesting the appointment of counsel. ECF No. 18.

Plaintiff does not have a constitutional right to appointed counsel in this action, *see Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court lacks the authority to require an attorney to represent plaintiff. *See Mallard v. U.S. District Court for the Southern District of Iowa*, 490 U.S. 296, 298 (1989). The court may request the voluntary assistance of counsel. *See* 28 U.S.C. § 1915(e)(1) (“The court may request an attorney to represent any person unable to afford counsel”); *Rand*, 113 F.3d at 1525. However, without a means to compensate counsel, the court will seek volunteer counsel only in exceptional circumstances. In determining whether such circumstances exist, “the district court must evaluate both the likelihood of success on the merits

1 [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
2 legal issues involved.” *Rand*, 113 F.3d at 1525 (internal quotation marks and citations omitted).

3 Plaintiff has yet to file a complaint that alleges a viable claim, and he has therefore failed
4 to demonstrate that he is likely to succeed on the merits. Indeed, plaintiff’s original complaint
5 fails to identify any constitutional or federal rights violated by defendant. See ECF Nos. 1 & 14.
6 For this reason, plaintiff’s motion to appoint counsel, ECF No. 18, is denied without prejudice.
7 Plaintiff, however, will be granted a brief extension of time to comply with the court’s March 3,
8 2021 order requiring him to either file an amended complaint or advise the court he wishes to
9 stand by his original complaint.

10 Accordingly, it is hereby ORDERED that:

- 11 1. Plaintiff’s motion for appointment of counsel, ECF No. 18, is denied.
12 2. Plaintiff is granted until May 24, 2021 to either file an amended complaint or advise
13 the court that he wishes to stand by his original complaint.

14 IT IS SO ORDERED.
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16 Dated: May 3, 2021


17 JEREMY D. PETERSON
18 UNITED STATES MAGISTRATE JUDGE

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